

Excerpts
Planning Commission Minutes
May 10, 2000

Application No. UP-556-00, Peninsula Hardwood Mulch, Inc.: Request pursuant to Sec. 24.1-801(a)(2) of the York County Zoning Ordinance, to authorize the expansion of a legally existing non-conforming use. The applicant requests the addition of mulch-processing equipment to the existing soil screening activities on the site.

Mr. Michael King made the staff presentation following a brief video and referred to the memorandum to the Commission dated May 2, 2000 containing the staff recommendation of approval subject to conditions contained in proposed Resolution PC-007. Mr. King stated this was an opportunity for the County to gain some control over a nonconforming use by imposing zoning controls through conditions of the use permit. He believed that would benefit all parties in the community.

Mrs. White inquired if sound abatement is proposed for the hammer mill but not for the soil sifting operation. Mr. King stated that is correct, because the soil sifting operation has been in operation and the sound abatement is recommended for the mulch processing only.

Mr. Semmes asked how a sound-deadening enclosure differed from a building to enclose the hammer mill in terms of reducing noise. Mr. King stated that the desired noise reduction could be accomplished using a smaller enclosure and further stated that construction of larger structures may result in the permanent establishment of the nonconforming use.

Mr. Semmes also noted the difficulty of placing a requirement for a specific rate or percentage of noise reduction in the absence of any measurement of initial sound from the machine. He asked if there is a provision to guarantee a specific rate of reduction. Mr. King said the noise level is difficult to determine but the applicant has a measuring device that could aid the staff in establishing limits. Mr. Semmes noted the existence of industrial standards for noise at certain distances and wondered if the noise levels at the applicant's operation have exceeded those standards.

Mr. Garman asked if the stormwater runoff provision covers the entire operation, and Mr. King said it is intended to do so. Mr. Garman inquired if a problem exists with stormwater runoff, to which Mr. King replied that some problems do exist and the proposed conditions should address some of the problems in the entire surrounding area by requiring a stormwater management plan.

Mr. Lockwood said he was not convinced the conditions as proposed would improve the current sound situation and noted the controls imposed for dust control and traffic. Mr. King said truck traffic had not been reported as a problem but the staff nevertheless proposes establishing some traffic limits. He said the proposed use permit conditions should control dust, stormwater, noise, and hours of operation.

Mr. Simasek suggested that allowing the operation to expand could have the same effect as constructing a new permanent structure by increasing the term of a nonconforming use. Mr. King said the owner could more easily sell or convert his operation into a different, conforming, use without another permanent structure.

Mr. Hendricks asked if the applicant mixes compost at the business, to which Mr. King replied that is a part of the operation and it could continue indefinitely without a use permit. He added that the applicant does not process NutraGreen, but buys, stores and sells it.

Responding to Mrs. White, Mr. King said the staff anticipates reducing the number of dump trucks used in the daily operation by 11, but all others would continue and no additional vehicles would be added as a result of the amendment, if approved.

The Chair opened the public hearing.

Mr. Larry Wilson, President of Peninsula Hardwood Mulch, stated he has owned this 40-year-old family business for the past 12 years, the last four of which have been spent modernizing and streamlining the Yorktown operations and purchasing a site in Toano for grinding. The business processes mulch in Toano and hauls it to Yorktown, and Mr. Wilson would like to eliminate much of the hauling and thereby reduce expenses. He wants to expand, offering more plants, trees, and mulching by consolidating operations at one location. He does not anticipate expanding the areas for topsoil or mulch at the Yorktown site, however. He said mulch continues to be the backbone of the business.

Mr. Wilson said he owns a decibel meter and, according to his tests, the noise at the intersection of Lakeside Drive and Route 17 is 20 to 30 dB higher than would be generated by the hammer mill. Mr. Wilson said he has a dust management plan that includes grinding in Toano, irrigation and using stone roadways at the plant.

Scott Reichle, Esquire, attorney for the applicant, spoke of the two distinct entities doing business at the subject site: Grafton Materials and Peninsula Hardwood Mulch (PHM). He said Grafton Materials conducts the topsoil operations at the site, which is regulated by the Virginia Department of Environmental Quality (DEQ) as a closed landfill. Mr. Reichle added that cost of the venture could become prohibitive if unnecessary restrictions are applied.

Wayne Moore, Esquire, 610 Thimble Shoals Boulevard, Newport News, represented Winders Pond Owners Association, which opposes the use permit. Mr. Moore said the residents do not know that the proposed conditions will effectively control the existing dust, noise, and erosion problems, and approving a use permit would entrench further the nonconforming use. They also believe their property values would be decreased by the additional operation. At his request, a number of people stood to identify themselves as opponents of the application.

Mr. Bruce Brown, 104 S. Joshua's Way, said he had visited the Toano site and it generated noise and a foul odor. He said the noise and air quality should be calculated prior to proceeding

with the application. He recommended a buffer zone sufficient for the property comparable to that of the County landfill. Mr. Brown mentioned the truck traffic in the vicinity of schools near the applicant's business site. There are approximately 4,500 residents and two lakes surrounding the area, he said, and he thought all would be impacted by increased production at the business. He recommended involvement of the DEQ and also for the County to reconsider the zoning classification.

Mr. Jay Orgeron, 103 S. Joshua's Way, moved to his home in 1992 because of the quality of life. He enjoys the neighborhood, he said, and noted that the parcel on which the applicant's business is located is surrounded by neighborhoods. He said air and water pollution, noise, and dust will detrimentally affect the quality of life for a large number of people if the application is approved.

Mr. Bob Legere, 120 Winder's Lane, does not think the proposed conditions are strong enough to control noise at the subject site, and also expects the value of his home to decrease if the application is approved. [He gave a letter to the Commission that he identified as being from a neighbor who could not attend the meeting.]

Mr. Joe Dumas, 133 Winder's Lane, said he visited a construction site to see a Mobar 1300 shredder, a 700 hp model which he acknowledged was not the same model as the shredder depicted in the presentation. He said if the proposed shredder is as loud as the one he saw, residents would not be able to enjoy their backyards or leave their windows open.

Ms. Janice Leaf, 130 Bailey Drive, represented Lakeside Forest Homeowners Association which she said supports appropriate business expansion in York County and the tax revenues it generates but does not consider the proposal to be an appropriate expansion. The members believe that traffic from the business's day-to-day operation and its customers would overburden Lakeside Drive, the noise, dust and odor would increase and real estate values would decrease.

Mr. Greg D. Frisby, 120 Bailey Drive, said his four children ride their bicycles on Lakeside Drive to playgrounds and swimming pools and he would be very concerned if traffic were to increase on that road, and also he expressed concern about possible increased dust and lower property values.

Ms. Susan Calhoun, 109 Joshua's Way, asked for clarification of the stormwater runoff problem and how much of the operation the applicant wants to move from Toano. Mr. Hendricks and Mr. King responded and suggested she speak with the applicant for any further clarification.

Mr. Daryl Calhoun, 109 Joshua's Way, said he visited the Toano site and thought that it smelled like chicken manure and wondered if the applicant's compost mix includes manure. Mr. Calhoun said no one in the vicinity of an operation producing or using chicken manure would be able to escape the odor.

Mr. Ed Norris of Winder's Pond expressed bewilderment that this application is being considered given the existence of five subdivisions surrounding the business. He anticipated the application, if approved, would be the first of more requests by the applicant to expand. He thinks the County government is obliged to protect the citizens.

Mr. Jim Florey, 116 Jacob's Run, said that he supports the applicant's business but believes several important questions have not been answered and he requested they be addressed in more detail. He was concerned specifically about noise, health, and safety: (a) how the noise levels will be measured and if the applicant is to set the benchmark for noise as it now appears; (b) how the level of airborne particulate will be measured and what the standard will be; and (c) how an expansion of the business and its customer base would bring about a decrease in associated traffic. Mr. Florey wanted to know what enforcement mechanisms would be used, what or who would trigger the mechanisms, and if annual inspections would be conducted.

Ms. Shari Davis of Bailey Drive said the noise from the business begins at 8:00 a.m. and is constant except on Sundays; the smell is unpleasant; and traffic is very heavy on Lakeside Drive during operations. She would be opposed to mulch grinding on Sundays. She does not think a buffer of trees as proposed would solve any of the problems associated with the applicant's business.

Mr. Wes Wagner, 104 Waterside Place, asked who will be monitoring, how often, and exactly what safeguards would be in place for dust, noise, water, and traffic pollution. He displayed a photograph he identified as himself standing before the equipment being used at the site, which Mr. Wagner estimated to be as tall as a house. He did not believe the business could expand by up to 50 percent of its current operation without intensifying the use, and recommended denial.

Ms. Linda Malone, 125 Winders Lane, was in favor of approval. She stated that she has experienced some problems in the past with dust or water runoff from the business and called DEQ and the problems were handled. She said the operation was there well before the surrounding neighborhoods were built and the noise and dust have not increased since she moved to her home in 1992. She also visited the Toano site, she stated, and did not find the noise level high or objectionable. Ms. Malone finds the applicant to be a good and responsive neighbor.

Mr. Frank Reed, 123 Winder's Lane, said he and his wife have learned to live with the noise and dust although they are definitely problems, but he strongly opposed the business being permitted to expand thereby exacerbating the existing problems.

There being no one else to speak, the Chair closed the public hearing.

Mr. Reichle responded to questions about ownership of businesses at the site, Grafton Materials and Peninsula Hardwood Mulch. He spoke of the DEQ-regulated landfill at the rear three-quarters of the property. He pointed out the portion of the land in question for the expansion is not regulated by the DEQ but the County under the conditions of a use permit could regulate its use.

Mr. Wilson responded to concerns of the Commission on matters including:

- *School bus traffic on Lakeside Drive* – Many subdivisions and new houses have been constructed so it is not realistic that the applicant can minimize the resultant traffic but he had no expectation of increased traffic with his proposed use
- *Grinder operation* – The grinder he proposes would be operated by a small, 200 hp electric motor, he explained, that is relatively quiet and not comparable to the Mobar motor mentioned earlier
- *Measuring noise, dust, water, traffic impacts* – Mr. Wilson said he would comply with whatever the County warrants to measure and implement reasonable controls

The Commission named other uses that could be employed by right on the RC-zoned parcel, should the use permit be denied. They include single-family residential, communications tower, agricultural including livestock farming, or a correctional institution.

The Commission stressed the need to obtain baseline information on existing sound and dust levels and stormwater control. Mr. Semmes said that all noise isn't equal because noises at different frequencies impact the listener in different ways. He said since the business existed before the residences, and the applicant agrees to work with the County on noise attenuating measures, there should be some attempts to attenuate the noise even though they may not improve the situation. He thought it pertinent to get more information so the noise issue can be addressed properly before the Commission recommends an increase the activity on the property.

Mr. Baldwin, following some discussion, recommended a revision to Condition 5 of the proposed resolution to require a baseline noise study prepared by an expert in the field and a guarantee that present noise levels would not increase, before the use is commenced.

Mrs. White moved the adoption of Resolution PC00-7(R), recommending approval with the proposed revision to Condition 5. The motion carried unanimously, 7:0.

PC00-7(R)

A RESOLUTION TO RECOMMEND APPROVAL OF APPLICATION NO. UP-556-00 WHICH REQUESTS A USE PERMIT TO AUTHORIZE THE EXPANSION OF A NONCONFORMING USE LOCATED AT 715 LAKESIDE DRIVE (ROUTE 620)

WHEREAS, Peninsula Hardwood Mulch, Inc. has submitted Application No. UP-556-00, which requests authorization pursuant to Section 24.1-801(a)(2) of the Zoning Ordinance to expand a nonconforming use by adding a mulch-processing operation to the Peninsula Hardwood Mulch, Inc. business located at 715 Lakeside Drive (formerly 105 Lakeside Drive) (Route 620). The property is zoned RC-Resource Conservation and is further identified as Assessor's Parcel No. 30-62; and

WHEREAS, said application has been referred to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has carefully considered the public comments and staff recommendation with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this 10th day of May, 2000, that Application No. UP-556-00 be, and it is hereby, transmitted to the York County Board of Supervisors with a recommendation of approval to authorize the expansion of a nonconforming use located at 715 Lakeside Drive (formerly 105 Lakeside Drive) (Route 620), subject to the following conditions:

1. This use permit shall authorize the expansion of a nonconforming use by adding a mulch-processing operation located at 715 Lakeside Drive (Route 620) and further identified as Assessor's Parcel No. 30-62.
2. The mulch-processing operation shall be confined to the limits and boundaries established on the concept plan entitled "Proposed Mill and Truck Dump" and dated February 28, 2000.
3. A landscaped berm shall be connected to the existing berm along the eastern boundary of the property prior to commencement of the mulch processing operation to effectively screen from view the mulch processing and soil screening activities from the Winder's Pond subdivision. An evergreen planting material shall be established that creates a solid screen along the berm within a five (5) year period from the date of approval of this application.
4. A row of evergreen planting material screen shall be established immediately that, within a five (5) year period from the date of approval of this application, creates a solid along the western boundary of the property in a design and configuration that, in the opinion of the Zoning Administrator, effectively screens from view the mulch processing and soil screening activities from the Lakeside Forest and York Crossing residential developments.
5. The hammer mill unit shall be enclosed with a sound proofing material that is kept in good repair or shall include other noise attenuation devices that, in the opinion of the Zoning Administrator, accomplish the same objective. Replacement of either the existing soil or mulch machine shall require review and approval by the Zoning Administrator. Prior to the commencement of this use permit, the applicant shall provide a noise study, prepared by an expert in the field acceptable to the Zoning Administrator that shall establish a baseline noise level along the perimeter of the property. The established baseline noise levels shall not increase as a result of activities that are conducted as part of the approved application.

6. The applicant shall submit for approval a stormwater management plan to the Department of Environmental and Development Services.
7. The hours of operation of the combined activities, i.e., the mulch processing and soil screening activities, shall be limited to Monday through Saturday from 8:00 a.m. to 6:00 p.m. These operations shall not be conducted on Sundays.
8. A dust suppression and management plan shall be submitted for approval to the Zoning Administrator.
9. Tractor-trailer traffic associated with the mulch processing operation shall not exceed ten (10) trip ends per twenty-four (24) hour period.

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